IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 19940 of 2005
Date of decision: 10-5-2007

Ram Sarup Saini .....Petitioner

Versus

The State of Haryana and another .....Respondents

CORAM:- HON'BLE MR. JUSTICE K.S.GAREWAL
HON'BLE MR. JUSTICE AJAI LAMBA

Present: Mr. Jagbir Malik, Advocate
for the petitioner

Mr. Ashish Kapoor, Additional Advocate General Haryana

K.S.GAREWAL, J.

Ram Sarup Saini has filed this petition to challenge acquisition proceedings in which his house situated at Konsiwas road, Rewari has been acquired.

According to the petitioner his house was built on rectangle No. 180 kila No. 27, in 1960 and the petitioner had been living in the house for over 40 years. He had attached copies of jambandi of 1965-66, electricity and water bills to prove the existence of the house. It was pleaded that the Government of Haryana had taken a consistent decision that it would not acquire residential houses for public purpose. A copy of instructions dated June 26, 1991 in this regard issued by Chief Administrator, HUDA has been annexed as Annexure P-5. Nevertheless, on December 24, 2002 a

notification under Section 4 of the Land Acquisition Act, 1894 was published acquiring about 28 acres of land including the petitioner's house.

The petitioner filed objections on January 20, 2003 pleading that he and his brothers Madan Lal and Surjan Singh were owners and in possession of land measuring 80 Kanals 12 Marlas and each had 1/3rd share. Out of this holding the petitioner had received his share on the basis of partition which measured about 42 Kanals. The petitioner had built the house with "A" class material. The house had five well furnished rooms, verandah, kitchen, bath and two toilets. It had been constructed on rectangle No. 180 Killa No. 27. The plan had been sanctioned by the Municipal Council Rewari on November 2, 2001. Development charges of Rs. 6,33,480/- in respect of 10558/- sq. yards were deposited with the Municipal Council. The construction work was completed within four months of the sanction of the plan with A class and RCC construction.

Furthermore, the petitioner had also got plans sanctioned for construction of 7500 square yards on the basis of the resolution of the Municipal Council dated January 18, 2002. Petitioner had deposited Rs. 4.80 lacs as development charges. The petitioner sought release of the constructed portion from acquisition. The petitioner has relied upon the Collector's report regarding his objection under Section 5-A. The Collector stated that there was construction on the property prior to the issuance of Section 4 notification, dimensions of the property were also mentioned. The house measured 27'X110', 97'X20', 10'X10'. There were 15 shops each measuring 180'X15' and 7 shops each measuring 70'X17'. While concluding his report the Collector recorded as under:-

"The applicant was given personal hearing on 21-05-2003 and I

have inspected the spot. The construction of the applicant which has been shown in column No.5 is of prior to the notification under section 4. It is proper to release the above construction from the acquisition."

The report of the Collector was disregarded.

Acquisition proceedings were challenged on the ground that the Government had adopted a selective policy of acquisition which amounted to colourable exercise of power without application of mind. There was a policy of the Haryana Government not to acquire the constructed areas and this has been so held by the Supreme Court in Sube Singh Vs. State of Haryana (2001) 7 SCC 545. The petitioner's constructed portion should be exempted from acquisition as it was surrounded by constructed houses from three sides and could not be amalgamated with the acquired property. The Land Acquisition Collector had specifically recommended release of the constructed property, including the petitioner's house, but the declaration under Section 6 and the notice under Section 9 had been issued without taking into consideration this factor.

The respondents appeared and filed reply pleading that the notification had been validly issued, the petitioner had filed objection under Section 5-A and got full opportunity of hearing, the process of acquisition was fair and based on a uniform approach and natural justice. The State had absolute right to acquire constructed property and the petitioner could not claim exemption as a matter of right. On merits it was pleaded that the petitioner had a full opportunity to present his objections, land had been acquired as per the development plan.

The purpose of acquisition in the present case was development

and utilization of land for residential and commercial purpose, Sector 5 Rewari. The site plan which has been relied upon by the petitioner shows that the property is located in thickly populated residential area and is part of residential Sector 4. Large parcels of the acquired land are owned by the petitioner. The petitioners house is also depicted in the site plan. The area of land that has been acquired is 28.75 acres. Award of the Collector was passed on December 8, 2005 whereas this petition was filed after a few days on December 20, 2005. The respondents have referred to report of joint site inspection. It states that objections were received from 51 land owners and the at the time of Section 4 notification whole area was vacant. Some residential premises existed on the site which was prior to the notification under Section 4 but do not seem to be very old. The area under acquisition was opposite the commercial complex in Sector 5, Rewari. The majority of the construction was of commercial nature. The Committee did not release any construction and recommended that declaration under Section 6 be issued. Furthermore, the respondents relied upon the fact that the petition had been filed after the award and on similar facts Division Bench of this Court decided case of Jai Narayan and others Vs. State of Haryana and another (C.W.P.No. 5296 of 2004 decided on July 18, 2006) which was also related to the present acquisition and was covered under the award dated December 8, 2005. The petition was dismissed.

We are of the view that the petitioner's house which exists on 180/27 was constructed much before the acquisition. The Land Acquisition Collector had also heard the petitioner, inspected the spot and reported that the construction shown in column 5 of his report (house 27'X110', 97'X20', 10'X10', 15 shops each of 180'X15' and 7 shops each of 70'X10') had been

constructed before the notification under Section 4 was issued. We are of the view that atleast the house which existed on the property deserved to be considered for release. Even jamabandi for the year 1965-66 Annexure P-1 showed gairmumkin makaan in khasra No. 180/27 (9 Kanals 12 Marlas).

We are convinced that the petitioner's house, whose dimensions are given in Land Acquisition Report (Annexure P-12) but not the shops, deserves to be released from acquisition. The property is old construction which was in existence at the time when notification under Section 4 was issued. Property is residential and not commercial. This property can certainly be recommended for integration in the development plan. Petitioner shall also be released proportionate area of land, which is usually equal to the built-up portion and is appurtenant to the property, for the beneficial enjoyment of the released property. The petitioner shall also be entitled to a 3 karam wide passage to his property, if no passage exists.

This petition is allowed in the above terms.

(K.S.GAREWAL)
JUDGE

(AJAI LAMBA)
JUDGE

May 10, 2007
RSK